

REMARKS/ARGUMENTS

This Amendment is submitted in response to the Official Action of December 19, 2005. Reconsideration and allowance of claims 1 and 4-9, as presently amended, are respectfully requested.

Claims 1, 6, 7 and 9 have been rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent 6,804,558 to Haller et al. This rejection is respectfully traversed in that the Haller reference fails to teach or suggest step (c) of independent claim 1 where an initiation date and a termination date accompany a text message sent from the external programmer to the implantable medical device so that the message will be displayed only if the time of interrogation occurs between the initiation date and the termination date.

In addition, independent claim 1 has been amended to incorporate the limitations of dependent claims 2 and 3 therein. The Haller reference has been carefully reviewed and nowhere in it is there a suggestion that a priority flag also accompany the text message sent to the implantable medical device from the external programmer and where such a priority flag determines the manner in which the text message is displayed.

The Haller '558 patent principally relates to incorporating a wireless telephone communication link between a communications module 100 and a remote workstation manned by a healthcare provider. A good synopsis of the Haller '558 patent is set out in column 47, lines 31-44. While reference is made at column 29, line 60(ff), that the communication module 100 can acquire information from the implanted medical device "according to a predetermined schedule stored in a memory of the communications module", this brief statement would not put a person skilled in the art in possession of the idea of providing for a message initiation date and a message termination date where the message can only be transmitted to the external programmer if the interrogation time falls between the initiation date and termination date. As the Examiner must appreciate, an event may be carried out "according to a predetermined schedule" if it is repeated at periodic time intervals irrespective of whether there is a defined starting date and ending date.

For the reasons set forth, neither independent claim 1 nor dependent claims 6, 7 and 9 are anticipated by the Haller '558 patent.

Claims 4, 5 and 8 remaining in the application have been rejected under 35 U.S.C. §103(a) as being unpatentable over the Haller '558 patent in view of published patent application 2002/0165898 A1 (hereinafter Duffy et al. '898). The rejection is also respectfully traversed. It appears to be the Examiner's contention that, while the Haller '558 patent contains no teaching or suggestion of a pending priority flags to text messages stored in the memory of a microprocessor contained within an implantable medical device, the teachings of the Duffy et al. '898 patent would render the claimed combination obvious. The Duffy reference is primarily concerned with the handling of electronic mail (e-mail) transmitted over a network such as the Internet so that tasks be carried by worker personnel can be allocated between multiple workers. In this fashion, surrogates may carry the effort if a designated user is unavailable.

At page 4, paragraph 0047, of the Duffy et al. '898 patent, mention is made that the task assignment system can provide visual alerts to draw attention to messages that are accompanied by a high-priority flag. That appears to be the only mention in the Duffy et al. '898 reference to the use of a priority flag. There is nothing in the Duffy et al. '898 reference that would tie it to messages telemetered to and from implantable medical devices. As such, it may be that the Examiner has engaged in impermissible hindsight in selecting a reference to be combined with the Haller et al. '898 patent teaching. Assigning priority to tasks to be performed by a work team and employing Internet e-mail communication bears little relationship to applicant's claimed arrangement as now defined by claims 4, 5 and 8.

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For the reasons advanced, then, it is believed that claims 1 and 4-9 are now in condition for allowance and a Notice to that effect is respectfully solicited.

Respectfully submitted,

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A handwritten signature in cursive script, appearing to read "Thomas J. Nikolai".

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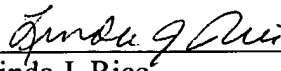
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CERTIFICATE OF MAILING

I hereby certify that the foregoing Amendment filed in response to the Official Action of December 19, 2005, in application Serial No. 10/713,813, filed on November 14, 2003, of Robert J. Sweeney entitled "Implantable Medical Device with Text Messaging Capability" is being deposited with the U.S. Postal Service as First Class mail in an envelope addressed to: Mail Stop Non-Fee Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, postage prepaid, on March 10, 2006.

Date of Signature: March 10, 2006.



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